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stances and likewise in preparation for performing a Federal defense mission?

Placing the Guard under the Federal Tort Claims Act not only protects the Guard, but also protects the citizens unfortunately involved in the accident, for reasons of fairness and equity toward aggrieved citizens and because the fiction of the National Guard as primarily a State operated and operating entity is unrealistic and antithetical to our newly restructured defense needs—with an emphasis on the role of the Reserves—I applaud the Senate for putting the final brick in the strong building of American defense by passing this measure. A guardsperson should not be burdened with a personal responsibility for an accident while others performing the same federally directed function and wearing the same uniform are rightfully shielded from liability.

MILITARY COOPERATION WITH CIVILIAN LAW ENFORCEMENT OFFICIALS

Mr. NUNN. Mr. President, I want to make a few observations about section 915 of the bill as reported, entitled "Military Cooperation With Civilian Law Enforcement Officials." I want it to be very clear what that provision does accomplish and what it does not.

The Posse Comitatus Act (18 U.S.C. 1385), passed in 1878, was a reaction to the direct use of the Army for law enforcement purposes during the Reconstruction decade following the Civil War. That act embodies one of the fundamental traditions in American history: Military power generally should not be used to enforce civilian laws. We need only glance at our own history, from the forced quartering of British troops in prerevolutionary American homes to the melancholy years of Reconstruction, to have ample evidence that even the best intentioned use of the Armed Forces to govern the civil population may lead to unfortunate consequences. Section 915 would maintain this tradition. As the committee report states, this section would not "alter (the fundamental principle (that military forces . . . should not provide direct assistance . . . to civilian law enforcement officials" except in accord with express legislation.

However, the Department of Defense has historically provided, consistent with this principle, some forms of indirect assistance to civilian law enforcement officials. But in the past two decades, a series of Federal court opinions has created an air of uncertainty about the outer boundaries of the Posse Comitatus Act. More specifically, seemingly incompatible decisions have clouded to what extent the Department of Defense can render indirect or passive assistance (for example, loan of equipment) to civilian law enforcement officials. This uncertainty has hampered use of these forms of military cooperation with civilian law enforcement, which are entirely compatible with the fundamental principle underlying the Posse Comitatus Act.

The series of Federal district court cases arising out of the 1973 incidents at Wounded Knee, S. Dak. give one a flavor for the diversity of judicial opinion on the types of indirect aid permitted under the Posse Comitatus Act. For example, an

earlier decision (*Wrynn v. United States*, 200 F. Supp. 457 (E.D.N.Y. 1961)) held that mere loan of equipment is a violation of the Posse Comitatus Act. But two of the Wounded Knee decisions (*United States v. Red Feather*, 392 F. Supp. 916 (D.S.D. 1975) and *United States v. McArthur*, 419 F. Supp. 187 (D.N.D. 1976)) say that such a loan is not a violation. There is also a diversity of judicial opinion on the use of military personnel in a strictly advisory role. Compare, for example, *United States v. Banks*, 383 F. Supp. 368 (D.S.D. 1974) (advice violates Posse Comitatus) with *United States v. Red Feather*, 392 F. Supp. 916 (D.S.D. 1975) (advice does not violate Posse Comitatus).

This type of judicial disagreement gives less than clear guidance to military commanders and civilian law enforcement authorities on the extent to which cooperation between them is permissible. And some courts have made it clear that their solution to violations of the Posse Comitatus Act may be to exclude evidence gathered during barred activities. See *United States v. Wolffs*, 594 F. 2d 77, 85 (5th Cir. 1979).

This state of affairs has placed military and law enforcement officials in a difficult position. On the one hand, evidence may be suppressed and serious criminal cases lost because of a violation of the act. On the other hand, some cases have made it clear that various forms of indirect, passive cooperation (for example loan of equipment, provision of advice) are permissible. The resulting uncertainty becomes even more worrisome in the field of drug enforcement. Certainly there is indirect assistance which can be provided by the military which will improve the efficiency of our efforts against drug traffic. Yet this type of cooperation is hindered by divergent and unpredictable case law establishing different legal tests to determine what conduct is permissible.

Section 915 will do no more than protect military personnel from such disparate court opinions. It would do so by clarifying and reaffirming the authority of the Secretary of Defense to provide indirect assistance.

Again, the provision makes it clear that the direct participation of personnel of the Armed Forces in civilian law enforcement actions, such as search and seizure or arrest is not authorized. Nor does this section enhance or increase the authority of the Armed Forces to gather or obtain intelligence information. It does not create any authority for the military to collect information, only to share information they have or may permissibly collect during the normal course of military operations, and only where it may be relevant to a violation of State or Federal law.

The words "normal course of military operations" carry with them all other provisions of Federal law which presently limit or authorize the collection of information by the Armed Forces. For example, the conduct of domestic civilian electronic surveillance continues to be governed by the pertinent provisions of title 18, United States Code; this section does not in any way authorize the mili-

tary to conduct domestic civilian electronic surveillance in domestic civilian investigations.

The Department of Defense must continue to comply with all applicable executive orders and internal directives governing collection of information. Section 915 only states that for purposes of the Posse Comitatus Act information collected during a routine military operation—such as the identification of planes or ships likely to be related to drug trafficking—may be provided to civilian law enforcement officials where it may be relevant to a violation of Federal or State law.

AUTOMATIC DATA PROCESSING EQUIPMENT

Mr. WARNER. Mr. President, I support the provision incorporated into the pending bill which will expedite the procurement of automatic data processing (ADP) equipment and services used in critical national security functions.

As chairman of the Strategic and Theater Nuclear Forces Subcommittee which recommended the adoption of this initiative to the full committee, I have had an opportunity to familiarize myself in some detail with the compelling reasons for the action taken by the committee on ADP acquisition. Put succinctly, the committee has recommended that the Congress, by adopting this legislation, cut a Gordian knot which is strangling agencies charged with performing critical national security missions.

The Gordian knot referred to is the body of regulation applying to ADP procurement by the Federal Government, which has evolved since the passage in 1965 of Public Law 89-306, commonly known as the Brooks Act. This well-intentioned statute was adopted at a time when the automatic data processing industry was in its infancy; when one firm had the lion's share of the public and private computer market; and when computer hardware was enormously expensive and a major capital investment.

Mr. President, I do not need to point out to my colleagues how different today's automatic data processing industry is from that of the 1960's. Cutthroat competition and superb technical innovation are the rule in the private sector; generations of computers are evolving in the space of only a few years; and the cost and importance of ADP hardware is dropping dramatically relative to software.

These phenomena, which have permitted private industry to upgrade and replace computers quickly and inexpensively to take full advantage of the fast-moving improvements in state of the art ADP equipment and services, have not had the same beneficial effect for Federal Government users. Why? The reason most frequently identified is the stultifying effect that implementation of the procurement regulations stemming from the Brooks Act has had on acquisition of ADP by the Government.

For example, the President's reorganization project in 1979 said: "Implementation of the Brooks bill has led to an excessively long procurement cycle of some 3 to 5 years—instant obsoles-